NO. 82-1153

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MOTOR CLUB OF AMERICA INSURANCE COMPANY,
A Corporation of the State of New Jersey,

Appellant,

vs.

STATE OF NEW JERSEY, STATE OF NEW JERSEY DEPARTMENT OF INSURANCE and JAMES J. SHEERAN, NEW JERSEY COMMISSIONER OF INSURANCE,

Appellees.

On Appeal from the Supreme Court of New Jersey

MOTION OF APPELLEES STATE OF NEW JERSEY STATE OF NEW JERSEY DEPARTMENT OF INSURANCE AND COMMISSIONER OF INSURANCE TO DISMISS OR AFFIRM

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MOTION OF APPELLEES STATE OF NEW JERSEY STATE OF NEW JERSEY DEPARTMENT OF INSURANCE AND COMMISSIONER OF INSURANCE TO DISMISS OR AFFIRM

Appellees, State of New Jersey, State of New Jersey Department of Insurance and Commissioner of Insurance respectfully move to dismiss this appeal or to affirm the order of the Supreme Court of New Jersey, pursuant to Rule 16(1)(b), on the grounds that the appeal does not present a substantial federal question and that the fed-

eral question raised was not expressly passed upon and, pursuant to Rule 16(1)(d), on the grounds that this appeal does not raise any issues of special importance and that the judgment below is totally consistent with federal precedent and is so obviously correct as to warrant no further review by this Court.

Counter-Statement of the Case

Motor Club of America Insurance Company ("MCAIC" or "Appellant" herein) is a domestic insurance company organized pursuant to the laws of New Jersey. It is empowered to write all lines of property and casualty coverage (Verified Complaint, ¶4) (Aa 27a).* A major portion of MCAIC's business consists of New Jersey automobile coverage (Verified Complaint, ¶5) (Aa 27a), and MCAIC has substantially limited its business activities in other states (Aa 27a).

In accordance with N.J.S.A. 17:29A-3 (Aa 77a), MCAIC is a member of a rating organization called Insurance Services Office ("ISO"). MCAIC has been a member of ISO during all times relevant to this matter. In the past years, ISO has, on behalf of member companies, requested and received from the Commissioner of Insurance a number of increases in the permissible rates charged for private passenger automobile coverage. From 1973 until the time this suit commenced in 1980, ISO had made eleven separate requests for increases in automobile rates, ten of which had been granted (Aa 10a). While the in-

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*As used throughout, "Ra" refers to the appendix to this motion to dismiss or affirm; "Aa" refers to the appendix to appellant's Jurisdictional Statement; and "Ab" refers to appellant's Jurisdictional Statement.

creases were in amounts less than that which had been sought by ISO, none of the rate approvals were ever challenged through appeal by either ISO or MCAIC.

In the years immediately preceding the filing of the complaint in this case, the financial condition of MCAIC had deteriorated. Policyholder surplus had greatly declined to a point where, in the view of the Commissioner, the company was on the brink of insolvency. Throughout 1980, the Commissioner monitored closely the financial status of MCAIC.

This action was initiated on October 27, 1980 by the filing of a Verified Complaint (Aa 26a) in the Chancery Division of the Superior Court of New Jersey. Appellant sought to enjoin the Commissioner from commencing liquidation or rehabilitation proceedings, pursuant to N.J.S.A. 17:30C-1 *et seq.* (Aa 84a ff.) against MCAIC, since the company feared that the Commissioner was on the verge of initiating such proceedings. MCAIC also alleged that the automobile insurance statutory and regulatory scheme, as administered, had effected a taking of its property without just compensation. MCAIC further contended that, both as a practical matter and as a matter of law, it was compelled to continue operations in New Jersey notwithstanding its ever-increasing losses, yet failed to allege any affirmative attempt to discontinue business, or even a desire to do so.

Shortly after the complaint was filed, MCAIC received an infusion of new capital which allayed the Commissioner's immediate concern that MCAIC might have been insolvent, and the count of the complaint which sought to enjoin the Commissioner from commencing liquidation proceedings was rendered moot (Aa 8a).

Appellees then moved for an order dismissing the complaint for failure to state a claim upon which relief could

be granted. It was argued that, among other things, this action represented an impermissible collateral attack on final unchallenged rate decisions, and therefore did not state a cause of action for a compensable taking.

In an opinion dated June 2, 1981 (Aa 5a ff.), the trial court granted major aspects of the state's motion (Aa 18a). The court dismissed all claims for monetary compensation. Also dismissed were all contentions that MCAIC was compelled, either by practical considerations or by N.J.S.A. 17:30C-1 *et seq.*, to continue operations in New Jersey notwithstanding growing losses. The court reasoned that a party which "fights to stay in business cannot be heard to assert that the refusal to let it cease such business is an injury . . ." (Aa 18a). The court did find, however, that Count I of the complaint stated a cause of action for declaratory relief only and refused to dismiss that part of the complaint. In addition, leave was granted to MCAIC to amend its complaint to assert a desire to stop operating.

On appeal, the Appellate Division of the New Jersey Superior Court reversed those portions of the Chancery Division order which granted leave to amend the complaint and which denied the motion to dismiss the claim for declaratory relief. The dismissal of the balance of the complaint was affirmed. The Appellate Division held, essentially, that appellant's allegations of constitutional infirmities in the insurance rating laws were of no substance, given appellant's acceptance, without one word of protest, of ten different rate increases during the time period covered by this suit, and further that appellant's challenge to the insurance company disolution statutes was not properly before the court, since appellant at no time either attempted to cease operations or was prevented from ceasing operations by the State.

A notice of petition for certification was filed in the Supreme Court of New Jersey on July 15, 1982 to review the entire Appellate Division decision, and later, on August 6, 1982, a notice of appeal to the state Supreme Court was filed. The petition for certification was denied on October 12, 1982 (Aa 21a), and, according to the rules of the New Jersey Supreme Court, that denial of certification was deemed to be a summary dismissal of the appeal. N. J. Ct. R. 2:12-9. (Ra3a).

The refusal of the Supreme Court of New Jersey to review the decision of the Appellate Division dated June 28, 1982 (Aa 1a) resulted in the filing of a Notice of Appeal with this Court on December 28, 1982 by MCAIC pursuant to 28 U.S.C. §1257(2). Subsequently, appellant filed a Jurisdictional Statement, and this motion on behalf of the State of New Jersey, the New Jersey Department of Insurance and the New Jersey Commissioner of Insurance followed.

Since the filing of the Jurisdictional Statement two significant events have occurred which bear directly on the validity of the claims of appellant and the necessity of further review of those claims by this Court. The first was the enactment of P.L. 1983, c. 65 (February 10, 1983) which embodies a substantial revision of not only the so-called "assigned risk" mechanism (for apportioning among automobile insurers those individuals required by statute to maintain auto insurance but unable to obtain it in the voluntary market), but also the rate setting procedure applicable to all lines of property and liability insurance (including auto). The statute is reproduced at Ra4a.

The second event was the filing with the New Jersey Department of Insuance of the statutorily required Annual

Statement describing appellant's operations for the year ending December 31, 1982.* The Statement, sworn to and filed by or on behalf of appellant, shows a total capital and surplus of $11,026,030, up from $3,358,107 as of December 31, 1981, for a total (positive) change in surplus as regards policyholders of $7,667,923 for the year 1982. This gain in surplus includes an underwriting profit (generally, an excess of premium income over policy claims and expenses, but not including investment income from policyholder-supplied funds) of $601,587. These gains were produced under the statutory and regulatory mechanism complained of by appellant.

* The Statement is a public record on file with the Department and can be produced for inspection if the Court deems it necessary. It is not included herein due to its size and bulk.

ARGUMENT

The judgment of the Appellate Division of the Superior Court of New Jersey dismissing all aspects of appellant's claim of an unconstitutional taking of appellant's property effected by the insurance regulatory laws of the State of New Jersey, and the New Jersey Supreme Court's refusal to review that judgment, should be affirmed since they are plainly correct, or the present appeal should be dismissed since it fails to raise a substantial federal issue, does not present an issue of broad importance and is consistent with federal precedent.

Appellant's broad assertion that the entire insurance regulatory scheme of the State of New Jersey (including the rate regulatory act in effect since 1944, N.J.S.A. 17:29A-1 *et seq.*, the assigned risk mechanism similar to one upheld against constitutional attack by this Court in *California State Auto Assn. Inter-Insurance Bureau* v. *Maloney*, 341 U.S. 105 (1951), and the laws related to the dissolution and liquidation of insurance companies, N.J.S.A. 17:30C-1 *et seq.*), is invalid on the ground of its being "repugnant to the Constitution ... of the United States," is meritless on its face and should be rejected by this Court as summarily as was done by the Supreme Court of New Jersey.

The contentions of appellant consists of two main thrusts. The first is directed at the system of rate regulation set forth in N.J.S.A. 17:29A-1 *et seq.* (and by implication both the Automobile Reparations Reform Act, or the "No-Fault" law, as it is commonly known, N.J.S.A. 39:6A-1 *et seq.* and the assigned risk mechanism created pursuant to N.J.S.A. 17:29D-1, both of which allegedly create the need for rate relief available pursuant to the rating

law). None of these statutes is challenged as being unconstitutional on its face, and no particular statute is alleged to have had an unconstitutional effect on appellant; rather, appellant simply makes the sweeping claim that all insurance regulatory acts, and the administration of those acts by the Commissioner and Department of Insurance, have effected a "taking" of its property.

Such a claim cannot stand in the face of the undisputed facts in this case: during the eight-year period encompassed by the Verified Complaint, appellant accepted, without challenge to their adequacy, rate increase after rate increase, while failing to utter one word in protest of the allegedly "coercive" administration and "substantial abuses" of the rate setting mechanism at the time those practices were supposed to have taken place. Appellant's Verified Complaint amounts to nothing more than an improper collateral attack on a series of final, unchallenged administrative actions, and appellant's failure to make use of any of several administrative and judicial remedies available at the time precludes it from claiming now that the State of New Jersey is somehow responsible for its unsuccessful operations; no substantial federal question is presented by this claim.

Appellant's second major contention is that, since 1975,* the State has compelled it to remain in business in the face of what it describes as "massive losses" (Ab 6). This compulsion is said to arise from the operation of N.J.S.A. 17:30C-1 *et seq.* (as interpreted by appellant) governing the rehabilitation and liquidation of insurance companies.

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* Ab 5 to Ab 6. Appellant apparently concedes that Count III of its Verified Complaint (Aa 35a to Aa 36a), alleging a compulsion by the State of New Jersey to remain in business prior to 1975, notwithstanding an admittedly clear right to cease operations (Aa 34a), is without substance.

The validity of those statutes was never passed upon by the courts of New Jersey in this case, since appellant has never attempted to cease operations voluntarily and accordingly, has never been "compelled" to remain in operation by the State. This contention cannot therefore form the basis of an appeal pursuant to 28 U.S.C. §1257(2) and presents no substantial federal question for review.

It is well settled that the failure of past rates to deliver a projected return may not be corrected through future rate decisions, *Bluefield Water Works & Imp. Co.* v. *Public Svc. Comm.*, 262 U.S. 679, 694 (1924); *In re New Jersey Power & Light*, 9 N.J. 82, 86-92, 104 A.2d 1 (1954). (The converse principle, that past gains cannot be taken from an insurer and refunded, also applies, *Opinion of the Justices*, 334 Mass. 711, 134 N.E. 2d 923 (Sup. Jud. Ct. 1956).) More importantly, there is no *constitutional* entitlement that past losses be made up by rates to be applied in the future, *Bluefield Water Works, supra.* Such losses are considered a "risk of the business," *Georgia Railway & Power Co.* v. *Railroad Comm.*, 278 F. 242, 247 (D. Ga. 1922), aff'd 262 U.S. 625 (1923). If such past losses cannot be recouped through future rates, it logically follows that the past losses may not be recovered from the public regulator, where, as in this case, the regulated entity failed to invoke *any* of the statutory or judicial remedies available to correct the various "wrongs" now complained of eight years after the fact.

> To concede this as a right [that past losses are recoverable in future rate proceedings] would be to guarantee income, *and would raise a correlative duty to account for earnings beyond what were reasonable in the past.* No limit could be placed to the period of the inquiry, nor could justice really be done by it to the individual stockholders or

> consumers actually concerned, for these are constantly changing. *A rate* established as reasonable, whether by the company or by the commission, *is not guaranteed by the commission or the public.* Whether it will actually yield more or less than a fair return during its continuance is a risk of the business. We do not deny that it is within the discretion of the commission to consider the experience of the immediate past in fixing a just rate for the future, but we hold that *no legal right exists to have disappointments or surprises in results balanced.* [*Georgia Railway & Power Co.* v. *Railroad Comm., supra,* 278 F. at 247. Emphasis supplied.]

What is required of the state regulatory mechanism is that an insurer subject to it be provided the *opportunity* to secure a reasonable profit from its operations. It is clear that both the Insurance Code and the case law of this state recognize this basic premise. N.J.S.A. 17:29A-7 provides for rates "not inadequate for the safeness and soundness of the insurer . . ." (Aa 79a) and N.J.S.A. 17:29A-11 requires that a "reasonable profit for insurers" must be considered by the Commissioner in setting rates (Ra1a); see also *Sheeran* v. *Nationwide Mutual Ins. Co.,* 80 N.J. 548, 560, 404 A.2d 625 (1979); *In re Application of Insurance Rating Board,* 63 N.J. 413, 307 A.2d 604 (1973); *In re Insurance Rating Board,* 55 N.J. 19, 258 A.2d 892 (1969).

Means of assuring that the insurance laws are administered fairly and in conformity with their object are available in the form of, for example, a direct appeal pursuant to N.J.S.A. 17:29A-24 (Aa 81a) and N. J. Ct. R. 2:2-3(a)(2) (Ra2a) from an adverse rate decision, an appeal from the failure of the Commissioner to make a final decision, *Central R.R. Co.* v. *Neeld,* 26 N.J. 172, 185, 139 A.2d

110 (1958), cert. den. 357 U.S. 928 (1958), an action in the nature of mandamus in the event appellant felt that the Commissioner was unduly delaying action on a rate filing, *Switz* v. *Middletown Tp.*, 23 N.J. 580, 587, 130 A.2d 15 (1957), and the continuing statutory mechanism for amendment of and deviation from previously approved rates, N.J.S.A. 17:29A-14 (Aa80a), N.J.S.A. 17:29A-10 (Ra1a). At least ten separate rate increases were granted to ISO members (including appellant) by the Commissioner during the period of time encompassed by the complaint, and not one was subjected to a legal challenge by ISO or by appellant as inadequate, improperly negotiated or in any way inconsistent with the standards of the Rating Law, N.J.S.A. 17:29A-1 *et seq.*

Further, it cannot seriously be argued that, notwithstanding the absence of explicit authority, the Commissioner lacks the inherent authority to set interim rates in a proper case (Ab 8). "We, moreover, regard it as both essential and well settled that the scope of the Commissioner's broad administrative powers conferred by N.J.S.A. 17:17-1, 2 must be construed to include interim rate-making not expressly proscribed by statute." *N. J. Land Title Ins. Rating Bureau* v. *Sheeran*, 151 N. J. Super. 45, 53, 376 A.2d 550 (App. Div. 1977). Appellant's contention that the confiscatory effect of the rate determinations underlying its complaint could not have been presented in an appeal from a rate decision is simply incorrect. A constitutional objection that given rate levels are confiscatory is clearly justiciable. See, for example, *Aetna Insurance Company* v. *Hyde*, 315 Mo. 113, 285 S.W. 65 (Sup. Ct. 1926), cert. granted 273 U.S. 681, cert. dism. 275 U.S. 440 (1928); *Jordan* v. *American Eagle Fire Ins. Co.*, 169 F.2d 281 (D.C. Cir. 1948); *Aetna Casualty and Surety Company* v. *Com. of Ins.*, 358 Mass. 272, 263 N.E. 2d 698 (Sup. Jud. Ct. 1970). Finally, the suggestion that appellant was prevented

from appealing by the regulatory practices of the Commissioner (Ab 25 to Ab 26) is untenable; as a matter of law, an insurer is entitled to receive a less than desired increase and *also* appeal from the amount not granted, *In re Insurance Rating Board,* 55 N.J. 19, 23, 258 A.2d 892 (1969), and appellant's failure to invoke any judicial remedies to correct what it now claims were abuses of the system is fatal to its position.

The various cases cited by appellant (Ab 18) for the propositions that a "taking" is compensable, and that excessive governmental regulation may effect a "taking", are irrelevant to the issues in this case. MCAIC has long had the statutory and judicial means to avoid the very problems it now complains of (inadequate rates, excessive delays in the rate approval process, etc.) yet squandered each such opportunity as it arose.

Clearly, this aspect of the case involves nothing more than an improper collateral attack on prior final rate decisions. It is fundamental that when an administrative agency acts within its jurisdiction and its final determination comports with "due process," that agency determination is not subject to collateral attack, *State* v. *Wenof,* 102 N.J. Super. 370, 374, 246 A.2d 59 (Law Div. 1978); 2 K. Davis, *Administrative Law Treatise,* §18.10 (1st ed. 1958). When an aggrieved party has been afforded a means to directly challenge final agency action, and fails to follow the prescribed method of appeal, courts have barred that party's attack of that administrative determination in subsequent proceedings, *Home Fuel Oil* v. *Glen Rock,* 118 N.J.L. 340, 192 A.516 (Sup. Ct. 1927).

As such a collateral attack, the complaint of appellant was correctly dismissed by the courts of New Jersey, and such dismissal was consistent with both applicable state

state law and federal precedent. The claim that existing insurance regulatory acts, and the administration thereof, are the cause of "continuing" (Ab 5) losses by appellant is inconsistent with both its long period of inaction, and its year-end 1982 results of operations, as noted above. Furthermore, all of the perceived statutory inadequacies relied upon by appellant have been addressed by P.L. 1983, c. 65: Section 4(a) and (c) of that act provides for an "automatic" annual rate increase of approximately 10%-12% applicable to automobile insurance, to be effective each year upon the date of the insurer's request therefore (Ra8a); Section 4(b) provides, with respect to all property and liability lines of insurance, that a rate of filing is deemed approved unless the Insurance Commissioner takes action upon it within certain time periods set out in the statute (Ra9a); and Sections 13 to 34 of the act (Ra20a) establish a joint underwriting association in the place of the assigned risk mechanism created pursuant to N.J.S.A. 17:29D-1, thereby assuring that individual insurers such as appellant will not suffer any losses as a result of providing auto insurance to the so-called "involuntary" or "residual" market. Additional review of this claim is clearly unnecessary.

Appellant's purported challenge to the validity of the Rehabilitation and Liquidation Act, N.J.S.A. 17:30C-1 *et seq.*, is spurious and was not passed upon by the courts in this case. The plain truth is that appellant never attempted to cease operations, and in its verified Complaint, did not allege that it even desired to do so. On the contrary, one of the primary purposes of this action was to prevent the State from taking over MCAIC in a statutory delinquency proceeding and to permit it to continue in business (Aa 36a to Aa 41a). Under these cir-

cumstances, it cannot be said that the validity of N.J.S.A. 17:30C-1 *et seq.* has been "drawn in question;" appellant has continued in operation of its own volition, and not as a result of the "compulsion" of any state statute. The Appellate Division of the Superior Court expressly avoided any decision on the validity of the Rehablitation and Liquidation Act as unnecessary (Aa 3a), and the proper predicate for an appeal to this Court pursuant to 28 U.S.C. §1257(2) is lacking. *Garrity* v. *New Jersey,* 385 U.S. 493 (1967).

In summary, none of the constitutional "issues" sought to be raised by appellant are of the requisite substantiality to warrant further review. Appellant urges that it has been stripped of some "right" to hold an interminable hearing on matters which should have been raised as they happened (if, in fact, they happened at all). There are no significant constitutional issues in this case; settled principles of ratemaking (both state and federal) preclude an insurer from recovering a shortfall in rates which were reasonable, and unchallenged, when set, and sound administrative procedure requires that final rate setting decisions not be relitigated *ad infinitum.* The contention that adequate appellate review of the Commissioner's actions, and proper judicial supervision of his alleged improprieties, were unavailable is untenable in light of the statutory and case law of this State to the contrary. Furthermore, plaintiff cannot cite a single case in which an unprofitable enterprise was found to have been "compelled" to operate by the state and was therefore entitled to compensatory damages, where the enterprise offered no indication that its continued operation was anything but voluntary. The decisions of the courts of the State of New Jersey should be affirmed as being obviously correct and consistent with federal precedent,

or this appeal should be dismissed as not presenting a substantial federal question or as not presenting a federal question which was passed upon.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed or the judgment of the Supreme Court of New Jersey affirmed.

Respectfully submitted,

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[APPENDIX FOLLOWS]

APPENDIX

Statutory Material and Court Rules

N.J.S.A. 17:29A-10

17:29A–10. Uniform change in rates; application; order of approval or denial

A member of or subscriber to a rating organization may make a written application ~~Any insurer may apply~~ to the commissioner for ~~leave to effect~~ permission to file a uniform percentage decrease or increase ~~in the rates applied by it to a particular kind or kinds~~ to be applied to the premiums produced by the rating system filed on its behalf by such rating organization for a kind of insurance, a subdivision of a kind of insurance or for a class of insurance which is found by the commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or otherwise deviate from the rating plans or rules so filed. The commissioner shall, ~~upon the conclusion of such hearing,~~ make an ~~such~~ order ~~as~~ approving the application if he shall deem it consistent with the establishment and maintenance of reasonable, adequate, and nondiscriminatory rates. If the commissioner shall find that such increase or decrease will result in rates that are unreasonable, inadequate, or unfairly discriminatory, he shall make an order denying the application.

N.J.S.A. 17:29A-11

17:29A–11. Commissioner, determination as to rates; factors to be considered

In every case where, pursuant to the provisions of this act, the commissioner is authorized or required to determine whether rates are reasonable and adequate, and not unfairly discriminatory, he may avail himself of the services of such experts as he may deem necessary or advisable for that purpose. In making such determination, the commissioner shall consider the factors applied by insurers and rating organizations generally in determining the bases for rates; the financial condition of the insurer; the method of operation of such insurer; the loss experience of the insurer, past and prospective, including where pertinent, the conflagration and catastrophe hazards, if any, both within and without this State; to all factors reasonably related to the kind of insurance involved; to a reasonable profit for the insurer, and, in the case of participating insurers, to policyholders' dividends. In the case of fire insurance, he shall consider the latest available experience of the fire insurance business during a period of not less than five years preceding the year in which such rates are reviewed by him.

L.1944, c. 27, p. 76, § 11.

New Jersey Court Rule 2:2-3

2:2–3. Appeals to the Appellate Division from Final Judgments, Decisions, Actions and from Rules; Tax Court

(a) As of Right. Except as otherwise provided by R. 2:2–1(a)(3) (final judgments appealable directly to the Supreme Court), appeals may be taken to the Appellate Division as of right

(1) from final judgments of the Superior Court trial divisions, or the judges thereof sitting as statutory agents; the Tax Court; the juvenile and domestic relations courts except in bastardy and paternity proceedings; the county district courts in civil actions except bastardy and paternity proceedings; and in summary contempt proceedings in all trial courts except municipal courts;

(2) to review final decisions or actions of any state administrative agency or officer, and to review the validity of any rule promulgated by such agency or officer excepting matters prescribed by R. 8:2 (tax matters) and matters governed by R. 4:74–8 (Wage Collection Section appeals), except that review pursuant to this subparagraph shall not be maintainable so long as there is available a right of review before any administrative agency or officer, unless the interest of justice requires otherwise;

(3) in such cases as are provided by law.

Final judgments of a court, for appeal purposes, shall also include those referred to by R. 4:42–2 (certification of interlocutory order), R. 4:79–8(f) (final custody determination in bifurcated matrimonial action), R. 4:94–5 (order on preliminary hearing in adoption action).

(b) By Leave. On application made pursuant to R. 2:5–6, appeals may be taken to the Appellate Division by leave granted, in extraordinary cases and in the interest of justice, from final judgments of a court of limited jurisdiction or from actions or decisions of an administrative agency or officer if the matter is appealable or reviewable as of right in a trial division of the Superior Court or in a county court, as where the jurisdiction of the court, agency or officer is questioned on substantial grounds.

New Jersey Court Rule 2:12-9

2:12–9. Where Party Appeals and at the Same Time Makes Application for Certification

Where a party seeks certification to review a final judgment of the Appellate Division and also appeals therefrom, he shall state in the petition for certification all questions he intends to raise on the appeal. The denial of certification shall be deemed to be a summary dismissal of the appeal, and the Clerk of the Supreme Court shall forthwith enter an order dismissing the appeal, unless the Supreme Court otherwise orders.

P.L. 1983, c. 65 (February 10, 1983)

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1696

STATE OF NEW JERSEY

INTRODUCED JULY 1, 1982

By Assemblymen ADUBATO, D. GALLO, KARCHER, THOMPSON, KOSCO, LESNIAK, KELLY, DEVERIN, MARKERT and DORIA

AN ACT to revise and reform the law with respect to automobile insurance and the administration of the law with respect to property and casualty insurance, amending P. L. 1944, c. 27, P. L. 1968, c. 385, and supplementing Title 17 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly committee amendments adopted September 20, 1982.**

1. Sections 1 to 12 of this act shall be known and may be cited as the "New Jersey Automobile Insurance Reform Act of 1982."

2. (New section) It is the intent and purpose of this act:

a. To require each insurer to apply on a flat and uniform fee basis per insured automobile Statewide its miscellaneous taxes, licenses, fees and at least 90% of its general expenses and acquisition, field supervision, and collection expense portions of the premium, excluding commissions.

b. To require that each insurer flatten the tax portion of the automobile insurance premium paid pursuant to P. L. 1945, c. 132 (C. 54:18A–1 et seq.) and certain assessments made pursuant to sections 4, 6 and 7 of P. L. 1952, c. 174 (C. 39:6–64, 39:6–66 and 39:6–67) on a flat uniform fee basis per insured automobile Statewide.

c. To establish the New Jersey Merit Rating Plan for convictions for motor vehicle violations and an accident surcharge system for motor vehicles based on criteria set forth in this act.

d. To require that automobile insurance rates charged any insured shall not exceed certain average rates, as determined in the act.

e. To provide that every senior citizen will receive the benefit of at least a 5% rate reduction as a result of this act.

f. To provide a modified prior approval system for private passenger automobile insurance rates as set forth in this act.

g. To establish a time guideline to assist in speeding the rate review process for all property and casualty lines, including auto-

mobile insurance, and to provide that a filing shall be deemed approved unless disapproved by the commissioner within the specified time.

h. To provide for higher deductibles on collision and comprehensive coverage, an increase in uninsured motorist coverage, and underinsured motorist coverage for private passenger automobile insurance.

i. To provide the funds necessary to modernize the operations and improve the effectiveness and efficiencies of the Division of Motor Vehicles so as to permit the division to discharge its statutory obligations relating to the automobile insurance system.

j. To provide by the enactment of all these reforms that automobile insurance will be affordable, available, and more equitable to the motorists of this State, and, in conjunction therewith, to create a study commission to evaluate the automobile insurance market and issue a report and its recommendation thereon within three years of the operative date of this act.

3. Section 1 of P. L. 1944, c. 27 (C. 17:29A–1) is amended to read as follows:

1. As used in this act,

(a) "Rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium.

(b) "Premium" means the consideration paid or to be paid to an insurer for the issuance and delivery of any binder or policy of insurance.

(c) "Rate-making" means the examination and analysis of every factor and influence related to and bearing upon the hazard and risk made the subject of insurance; the collection and collation of such factors and influences into rating systems; and the application of such rating-systems to individual risks.

(d) "Rating-system" means every schedule, class, classification, rule, guide, standard, manual, table, rating plan, or compilation by whatever name described, containing the rates used by any rating organization or by any insurer, or used by any insurer or by any rating organization in determining or ascertaining a rate.

(e) "Policy of insurance," without otherwise limiting its meaning, shall include guaranty and surety bonds.

(f) "Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of rate-making for two or more insurers.

(g) "Insurer" means any person or persons, corporation, association, partnership or company authorized by the laws of this State to transact the business of insurance in this State.

(h) "Commissioner" means the Commissioner of [Banking and] Insurance of New Jersey.

(i) "Risk," as the context may require, means, (1) as to fire insurance or any other kind of insurance which, by law, may be embraced in a policy of fire insurance as part thereof or as supplemental thereto, any property, real or personal, described in a policy, exposed to any hazard or peril named in such policy; and (2) as to all other kinds of insurance not specifically included in subsection (i) (1) of this section, the hazard or peril named in a policy of

insurance.

(j) "Filer" means a rating organization or any insurer making its own rates.

**(k) "Commission" means the commission paid by the insurer to the producer or, for those insurers whose sales compensation, as reported on the insurer's expense exhibits, is not classified as a commission, such compensation shall be treated as a commission.*

4. Section 14 of P. L. 1944, c. 27 (C. 17:29A–14) is amended to read as follows:

14. *a. With regard to all property and casualty lines, a filer* [A rating organization, or any insurer making its own rates,] may, from time to time, alter, supplement, or amend its *rates,* rating-systems, or any part thereof, by filing with the commissioner copies of such alterations, supplements, or amendments together with a statement of the reason or reasons for such alteration, supplement, or amendment, *in a manner and with such information as may be required by the commissioner.* If such alteration, supplement or amendment shall have the effect of increasing or decreasing rates, the commissioner shall determine whether the rates as altered thereby are reasonable, adequate, and not unfairly discriminatory. If the commissioner shall determine that the rates as so altered are not unreasonably high, or inadequate, or unfairly discriminatory, he shall make an order approving them. If he shall find that the rates as altered are unreasonable, inadequate, or unfairly discriminatory, he shall issue an order disapproving such alteration, supplement or amendment. *With regard to private passenger automobile insurance, in addition to or concurrently with the pro-*

cedure prescribed for all other property and casualty lines, a filer may, from time to time, alter, supplement or amend its rates, rating systems or any part thereof by making an informational filing with the commissioner of alterations, supplements or amendments together with a statement of the reason or reasons therefor, including but not limited to the claim and expense experience of the individual filer,* in accordance with the provisions of subsecton c. of this section.*

b. If an insurer or rating organization files a proposed alteration, supplement or amendment to its rating system, or any part thereof, which would result in a change in rates, the commissioner may, or upon the request of the filer or the Public Advocate, shall certify the matter for a hearing. The hearing shall, at the commissioner's discretion, be conducted by himself or by the Office of Administrative Law, created by P. L. 1978, c. 67 (C. 52:14F–1 et seq.), as a contested case. The following requirements shall apply to the hearing:

(1) The hearing shall commence within 30 days of the date of the request or decision that a hearing is to be held. The hearing shall be held on consecutive working days. If the hearing is conducted by an administrative law judge, the administrative law judge shall submit his findings and recommendations to the commissioner within 30 days of the close of the hearing. A decision shall be rendered by the commissioner not later than 60 days from the close of the hearing. A filing shall be deemed to be approved unless rejected or modified by the commissioner within the time period provided herein.

(2) The commissioner, or the Director of the Office of Administrative Law, as appropriate, shall notify all interested parties, including the Public Advocate on behalf of insurance consumers, of the date set for commencement of the hearing on the date of the filing of the request for a hearing, or within 10 days of the decision that a hearing is to be held.

(3) The insurer or rating organization making a filing on which a hearing is held shall bear the costs of the hearing.

(4) The commissioner may promulgate rules and regulations (a) to establish standards for the submission of proposed filings, amendments, additions, deletions and alterations to the rating systems of filers, which may include forms to be submitted by each filer; and (b) making such other provisions as he deems necessary for effective implementation of this act, except that all requests for information shall be limited to the kinds of detail required by the commissioner under section 5 of P. L. 1944, c. 27 (C. 17:29A-5).

c. (1) With regard to private passenger automobile insurance, the commissioner shall annually promulgate, on or before February 1, separately for each coverage, a maximum annualized percentage change in rate level which a filer may implement, in whole or in part, in a single or multiple filings, in connection with the informational filing procedure of subsection a. of this section. The maximum annualized percentage change in rate level shall be based on rates promulgated by the rating bureau which files rates for the greatest number of insurers "in the voluntary private passenger automobile insurance market" in the State, exclusive of the residual market equalization charges as defined in subsection o.

of section 15 of the "New Jersey Automobile Full Insurance Availability Act" (P. L. , c. ; C.).

(2) The maximum annualized percentage change which a filer may implement pursuant to subsection a. of this section shall be equal to the arithmetic average of the full annualized percentage changes implemented during the preceding three calendar years in which a rate increase was implemented by the rating bureau which files rates for the greatest number of insurers "in the voluntary private passenger automobile insurance market" in the State. For purposes of this paragraph, the full annualized rate level percentage change implemented in any one calendar year shall be equal to the sum of all full annualized rate level percentage changes implemented during the same calendar year.

(3) Rates filed under this subsection should take effect on the date of the informational filing with the commissioner.

5. Section 2 of P. L. 1968, c. 385 (C. 17:28–1.1) is amended to read as follows:

2. *a.* No automobile liability policy or renewal of such policy, of insurance insuring against loss resulting from liability imposed by law for bodily injury or death, sustained by any person arising out of the ownership, maintenance or use of a motor vehicle shall be issued in this State with respect to any motor vehicle registered or principally garaged in this State unless it includes coverage, in limits for bodily injury or death as follows:

[a.] *(1)* an amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident, and

[b.] *(2)* an amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00, exclusive of interest and costs, on account of injury to or death of more than one person, in any one accident,

under provisions approved by the Commissioner of Insurance, for payment of all or part of the sums which the insured or his legal representative shall be legally entitled to recover as damages from the operator or owner of an uninsured automobile, or hit and run automobile as defined in section 18 of chapter 174 of the laws of 1952 (C. 39:6-78), because of bodily injury, sickness or disease, including death resulting therefrom, sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured or hit and run automobile anywhere within the United States or Canada. All such automobile liability policies shall also include coverage for the payment of all or part of the sums which persons insured thereunder shall be legally entitled to recover as damages from owners or operators of uninsured automobiles, other than hit and run automobiles, because of injury to or destruction to the personal property of such insured with a limit in the aggregate for all insureds involved in any one accident of $5,000.00, and subject, for each insured, to an exclusion of the first $100.00 of such damages.

b. Uninsured and underinsured motorist coverage in excess of that provided for in subsection a. of this section shall be provided as an option by an insurer to the named insured up to at least the following limits: $250,0000.00 each person and $500,000.00 each accident for bodily injury: $100,000.00 each accident for property

damage or $500,000.00 single limit, subject to an exclusion of the first $100.00 of such damage to property for each accident, except that the limits for uninsured and underinsured motorist coverage shall not exceed the insured's automobile liability policy limits for bodily injury and property damage, respectively.

Rates for uninsured and underinsured motorist coverage for the same limits shall, for each filer, be uniform on a Statewide basis without regard to classification or territory.

For the purpose of this section, "underinsured motorist coverage" means insurance for damages because of bodily injury and property damage resulting from an accident arising out of the ownership, maintenance or use of an underinsured automobile. An automobile is underinsured when the sum of the limits of liability under all bodily injury and property damage liability bonds and insurance policies available to a person against whom recovery is sought for bodily injury or property damage is, at the time of the accident, less than the applicable limits of liability afforded under the automobile insurance policy held by the person seeking such recovery.

6. a. (New section) A merit rating accident surcharge system for private passenger automobiles may be used both in the voluntary market and by the New Jersey Automobile Full Insurance Underwriting Association created pursuant to P. L. , c. ; C. . No surcharges for damage to any property shall be imposed on or after the operative date of this act, unless there is an accident within a three year period immediately preceding the effective date of coverage which results in payments by the

insurer of at least a $300.00 property damage liability claim or any payment by the insurer of a bodily injury claim arising out of a collision of a private passenger automobile with a pedestrian. All moneys collected under this subsection shall be retained by the insurer assessing the surcharge. Accident surcharges shall be imposed for a three year period and shall, for each filer, be uniform on a Statewide basis without regard to classification or territory.

b. There is created a New Jersey Merit Rating Plan which shall apply to all drivers and shall include, but not be limited to the following provisions:

(1) (a) Plan surcharges shall be levied by the Division of Motor Vehicles on any driver who has accumulated, within the immediately preceding three year period, beginning on or after the effective date of this act, six or more motor vehicle points as provided in Title 39 of the Revised Statutes, exclusive of any points for convictions pursuant to R. S. 39:4-50; except that the allowance for a reduction of points in Title 39 of the Revised Statutes shall not apply for the purpose of determining surcharges under this paragraph. Surcharges shall be levied for each year in which the driver possesses six or more points. Surcharges assessed pursuant to this paragraph shall be not less than $100.00 for six points, and not less than $25.00 for each additional point. The commissioner may increase the amount of surcharges as he deems necessary.

(b) For a three year period following the effective date of this act, any driver who has accumulated on or after that date three or "*more*" motor vehicle points, other than for a conviction pursuant

to R. S. 39:4–50, shall be annually subject to a surcharge in the amount of $55.00 for the first three points and $15.00 for each additional point up to six. For six or more points, the surcharges provided in paragraph (1) (a) shall apply. The allowance for a reduction of points as provided in Title 39 of the Revised Statutes shall not apply for the purpose of determining surcharges under this paragraph. The provisions of this paragraph shall expire three years following the effective date of this act.

(2) Plan surcharges shall be levied for convictions under R. S. 39:4–50 for a violation occurring on or after the effective date of this act. Surcharges levied under this paragraph shall be for a three year period, and shall be not less than $1,000.00 for each of the first two convictions, and not less than $1,500.00 for *[each additional]* *the third* conviction occurring within a three year period. The commissioner may increase the amount of surcharges as he deems necessary.

[(3) The dollar amount of all surcharges levied under the New Jersey Merit Rating Plan shall for each filer, be uniform on a Statewide basis, without regard to classification and territory.]

If, upon receipt of written notification by certified mail, return receipt requested, from the Division of Motor Vehicles, mailed to the last address of record with the division, a driver fails to pay a surcharge levied under this subsection, the license of the driver shall be suspended forthwith until the surcharge is paid to the Division of Motor Vehicles; except that upon satisfactory showing of indigency, the Division of Motor Vehicles may authorize payment of the surcharge on an installment basis over a period not

to exceed six months.

All moneys collectible under this subsection shall be billed and collected by the Division of Motor Vehicles. Of the moneys collected, 80% shall be remitted to the New Jersey Automobile Full Insurance Underwriting Association, and 20% shall be retained, for administrative expenses, by the Division of Motor Vehicles and turned over to the State Treasury for deposit in a special account to be used by the Division of Motor Vehicles, as may be necessary, to modernize its operations and improve its effectiveness and efficiency in order to discharge its statutory obligations. Any moneys in the special account at the end of a fiscal year shall be transferred to the General State Fund for use for general State purposes. Moneys shall be appropriated annually to the special account.

c. Any motor vehicle conviction points accumulated within a three year period prior to the operative date of this act by a driver insured under the automobile insurance plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1), shall be carried over into the New Jersey Automobile Full Insurance Underwriting Association, if such driver is insured by the association, and shall be used to determine any surcharges for motor vehicle convictions to which the driver may be subject pursuant to subsection b. of this section. Surcharges shall be levied in accordance with subsection b., except that the New Jersey Automobile Full Insurance Underwriting Association shall bill and collect the surcharges. Of the moneys collected, the association shall retain 80% and 20% shall be remitted to the Division of Motor Vehicles and turned over to the

State Treasury for deposit in a special account for use as provided in subsection b. Moneys shall be appropriated annually to the special account.

The provisions of this subsection shall expire three years from the operative date of this act.

d. The dollar amount of all motor vehicle conviction surcharges shall be at least equivalent to the differential between the rates charged to insureds as promulgated by the rating bureau which files rates for the greatest number of insurers **in the voluntary private passenger automobile insurance market** in this State and the Supplement I rates in use as of December 31, 1982 by the automobile insurance plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1), and the amount collectible under the motor vehicle conviction surcharge system in use by the automobile insurance plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1 et seq.) prior to the implementation of this act.

e. The Commissioner of Insurance and the Director of the Division of Motor Vehicles, as may be appropriate, shall adopt any rules and regulations necessary or appropriate to effectuate the purposes of this section.

7. (New section) Any filing made for the purpose of automobile insurance rate making shall indicate the actual rate needs of the filer, provided, however, that (a) each filer's rate classification definitions, as used by that filer, shall be uniform Statewide; (b) the automobile insurance rate charged an insured shall not exceed two and one-half times the filer's territorial base rate for each coverage,

exclusive of driving record surcharges and discounts; and (c) the automobile insurance rate for the base class in any territory for any filer shall not exceed 1.35 times the filer's Statewide average base rate for each coverage, exclusive of driving record surcharges and discounts. The automobile insurance rate of an automobile whose principal operator is 65 years of age or older shall not exceed one and one-quarter times the Statewide average rate for principal operators 65 years of age or older for each coverage, exclusive of driving record surcharges and discounts; provided, however, that no filer shall increase rates for principal operators 65 years of age or older as a result of the implementation of this section unless more than 50% of its insureds are principal operators 65 years of age or older.

As used in this section, base rate means the automobile insurance rate charged for an automobile that is not used in business and not used in going to and from work except for the going to and from work distance included in the pleasure use classification of the filer, and where there is no youthful operator, as defined in the filer's classification system. The base rate class shall not include automobiles to which discounts apply under the filer's classification system, including, but not limited to, farmer's and senior citizen's automobiles.

The provisions of this section shall be implemented after the implementation of the provisions of subsection a. of section 8 of this act.

8. (New section) a. Every filer making automobile rates in this State shall apply on a flat and uniform fee basis per insured auto-

mobile Statewide those miscellaneous taxes, licenses, and fees, as defined in the most recent rate filing of an automobile filer, and at least 90% of its general expenses and acquisition, field supervision, and collection expenses, excluding commissions, as such expenses are defined in the filer's most recent rate filing with the commissioner.

b. The commissioner and the State Treasurer shall issue a regulation no later than 90 days after the effective date of this act to require automobile filers to calculate and collect taxes for their insureds paid pursuant to P. L. 1945, c. 132 (C. 54:18A–1 et seq.) and any assessments to be made pursuant to sections 4, 6 and 7 of P. L. 1952, c. 174 (C. 39:6–64, 39:6–66 and 39:6–67), exclusive of assessments made to reimburse a filer for medical benefits payable under section 4 of P. L. 1972, c. 70 (C. 39:6A–4) in excess of $75,000.00, on a flat and uniform fee basis per insured automobile Statewide, which shall take effect on January 1, 1984.

9. (New section) Within 60 days following the effective date of this act, every filer shall reduce by at least 5% the rates of all principal operators 65 years of age or older from the rates in effect as of the effective date of this act. On or before the effective date of this reduction, every filer shall make an informational filing with the commissioner reflecting the change.

10. (New section) The commissioner shall promulgate rules and regulations requiring insurers to offer a range of deductibles up to at least $1,000.00 for private passenger automobile collision and comprehensive coverages.

11. (New section) No producer commission shall be paid on the

additional premium generated by an inexperienced operator classification.

12. (New section) The Banking and Insurance Committee of the General Assembly, and the Labor, Industry and Professions Committee of the Senate, or their respective successors, are constituted as a joint committee for the purposes of monitoring and evaluating the effectiveness of the implementation of sections 4 to 11 of this act, and said joint committee shall, as it may deem appropriate, issue recommendations for administrative or legislative changes affecting the implementation of this act.

13. (New section) Sections 13 to 34 of this act shall be known and may be cited as the "New Jersey Automobile Full Insurance Availability Act."

14. (New section) The purpose of this act is to assure to the New Jersey insurance consumer full access to automobile insurance through normal market outlets at standard market rates, to encourage the use of available market facilities, to provide automobile insurance for qualified applicants who cannot otherwise obtain such insurance through a full automobile insurance underwriting association, and to require that companies be made whole for losses in excess of regulated rates on all risks not voluntarily written by providing procedures for the spreading and recoupment of losses based on actual experience.

15. (New section) As used in sections 13 to 34 of this act:

a. "Association" means the New Jersey Automobile Full Insurance Underwriting Association.

b. "Automobile" means a private passenger automobile of a

private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching; and, solely for the purposes of this act, a motorcycle, as defined in R. S. 39:1-1—An automobile owned by a farm family copartnership or corporation which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

c. "Automobile insurance" means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance or use of automobiles, including but not limited to, personal injury protection insurance, bodily injury liability insurance, property damage liability insurance, physical damage insurance and uninsured and underinsured motorist insurance.

d. "Board" or "board of directors" means the board of directors of the association.

e. "Company" or "member" means an insurer member of the association.

f. "Commissioner" means the Commissioner of Insurance.

g. "Director" means a member of the board of directors of the

New Jersey Automobile Full Insurance Underwriting Association.

h. "Net direct car years of liability exposure" means direct bodily injury liability car years of exposure, after deducting returns for cancellations, but without adding reinsurance assumed or deducting reinsurance ceded, as determined by the board and approved by the commissioner.

i. "Net direct car years of physical damage exposure" means direct physical damage car years of exposure, after deducting returns for cancellations, but without adding reinsurance assumed or deducting reinsurance ceded, as determined by the board and approved by the commissioner.

j. "Person" means every natural person.

k. "Plan of operation" means the plan of operation of the association created pursuant to section 18 of this act.

l. "Producer" means an agent or broker licensed to transact the business of automobile insurance in this State.

m. "Qualified Applicant" means a person **domiciled in New Jersey,** who is an owner of an automobile registered and principally garaged in this State **[*or is a New Jersey domiciliary who has a driver's license which is valid in this State*]**, except that nonresidents who are members of the United States military forces shall be eligible with respect to automobiles registered in other states if such military nonresidents are stationed in this State and their vehicles are garaged in this State at the time the application is made and if they are otherwise eligible for insurance coverage issued by the association. No person shall, however, be deemed a qualified applicant, if the principal operator of the automobile to

be insured does not hold a driver's license which is valid in this State; or if a regular operator of the automobile other than the principal operator does not hold such a license; or if timely payment of premium is not tendered; or if the principal operator of the automobile does not furnish the information necessary to effect insurance; or if such person rents or leases automobiles to others or automobiles which are used for commercial purposes.

n. "Underinsured motorist coverage" means insurance for damages because of bodily injury and property damage caused by accident and arising out of the ownership, maintenance or use of an underinsured automobile. An automobile is underinsured when the sum of the limits of liability under all bodily injury and property damage liability bonds and insurance policies available to a person against whom recovery is sought for bodily injury or property damage is, at the time of the accident, less than the applicable limits of liability afforded under the automobile insurance policy held by the person seeking such recovery.

o. "Residual market equalization charge" means the amount which when added to all other sources of association income, will cause the association to operate on a no profit, no loss basis.

16. (New section) There is created in the State of New Jersey an unincorporated nonprofit association to be known as the New Jersey Automobile Full Insurance Underwriting Association consisting of all insurers licensed to transact automobile insurance in this State, with its headquarters located in a place within the State of New Jersey to be determined by the board of directors, with the approval of the commissioner. Every such insurer shall be a

member of the association and shall be bound by the association's plan of operation as conditions of authority to transact automobile insurance in this State. Any insurer which has ceased to transact automobile insurance in this State shall nevertheless remain liable for income, as provided in the plan of operation, with respect to business transacted prior to the effective date of its cessation of business in the State, and the commissioner may require such an insurer to deposit with the association an amount sufficient to meet such insurer's obligations.

17. (New section) a. Within 45 days after the effective date of this act, the Governor shall appoint a board of directors, and within 30 days after the appointment of the board, the commissioner shall call the first, or organizational meeting of the association which shall seat the board of directors. The board shall consist of 14 persons to be appointed by the Governor, of which eight shall represent member companies, three shall represent producers, and three shall be public members. Members of the board shall be compensated from the moneys of the association for their services, pursuant to standards and procedures set forth in the plan of operation. In appointing the representatives of the member companies, the Governor shall select two persons from a list of not fewer than three persons nominated by the American Insurance Association, or its successor organization, from the officers or employees of insurers which are licensed to transact automobile insurance in this State and which are members or subscribers of that organization; two persons from a list of not fewer than three persons nominated by the Alliance of American Insurers, or its successor organization,

from the officers or employees of insurers which are licensed to transact automobile insurance in this State and which are members or subscribers of that organization; two persons from a list of not less than three persons nominated by the National Association of Independent Insurers, or its successor organization, from the officers or employees of insurers which are licensed to transact automobile insurance in this State and which are members or subscribers of that organization; and two persons from the officers or employees of any insurers which are licensed in this State and are not members or subscribers of any of the above mentioned organizations. All nominations made by the associations shall include at least one representative of an insurer which does not intend to be a servicing carrier. In appointing the producer representatives, the Governor shall select one person from a list of not fewer than three nominated by the Professional Insurance Agents Association or its successor organization; one person from a list of not fewer than three nominated by the Independent Insurance Agents Association or its successor organization; and one person from a list of not fewer than three nominated by the Insurance Brokers Association or its successor organization. The Governor shall name two surrogates for each director on the board from a list submitted to him by each appointee. The Governor shall, with the advice and consent of the Senate, also appoint three public members to the board. The commissioner or his designated representative shall be entitled to attend and participate in all meetings of the board or any of its committees.

Each *[company]* *trade association* and producer association

shall have 15 days days from the effective date of this act to submit its prescribed list of board of director candidates to the Governor. The Governor shall have 30 days from receipt of each list to select permanent board members from it. If any of the associations named in this section fails to submit the lists from which the Governor is to select members of the board of directors within time, the Governor shall appoint temporary board members to represent each association that has failed to submit its list. In selecting temporary board members, the Governor shall be guided by the selection criteria set forth herein. Upon subsequent receipt of the list from the association, the Governor shall select permanent board members to replace the temporary board members within 30 days. Such replacement shall become effective immediately.

The initial appointment of four insurer directors, one producer-group director, and one public member shall be for a term of one year. The initial appointments of all other directors shall be for terms of two years. After the initial appointments all directors shall be appointed for terms of two years and shall serve until their successors are appointed and qualified. The Governor shall fill all appointed vacancies on the board consistent with the above-mentioned procedures and classifications. Appointments to fill vacancies shall be for the unexpired term of the director to be replaced. Directors may be reimbursed from the moneys of the association for reasonable expenses incurred by them as members.

b. After the board has been appointed it shall elect from its membership a chairman and shall then meet thereafter at least annually, and as often as the chairman or the plan of operation

shall require, or at the request of any five members of the board or the commissioner. Each member of the board shall be entitled to one vote. The commissioner, or his designated representative, shall have no right to vote. Eight voting members of the board shall constitute a quorum. A majority of the voting members shall determine any action of the board. No member may serve as chairman for more than two consecutive years.

c. The board shall have and exercise all powers of the association not reserved to the members by the plan of operation or as otherwise provided in this act.

18. (New section) a. Within 90 days after the organizational meeting, unless after the sixtieth day, but not later than the seventieth day, following the organizational meeting, the *[board]* *commissioner* for good cause grants an additional period not to exceed 30 days, the board shall file with the commissioner for his approval a proposed plan of operation, consistent with the provisions of this act, which shall provide for the prompt and efficient provision of automobile insurance to qualified applicants. The plan of operation shall provide for, among other matters, methods and means for the collection, investment and disbursement of funds; methods and standards for the establishment of adequate, actuarially sound reserves for unpaid losses, including provision for incurred but not reported losses; reasonable and adequate commissions to producers; protection of the interests of producers of record without a contractual relationship with a voluntary market member company; procedures and methods for issuing policies on behalf of the association; the method for determining and means

of assessing the liability of an insurer which ceases to transact automobile insurance in this State with respect to business transacted prior to the effective date of its termination of membership; minimum requirements for the selection and performance of servicing carriers; minimum requirements for the performance of producers; reasonable and adequate compensation of such servicing carriers; procedures for matching producers with servicing carriers; the methods and procedures for notifying directors of the time and place of board meetings; and the phasing out of the plan for the providing and apportionment of automobile insurance pursuant to section 1 of P. L. 1970, c. 215 (C. 17:29D-1), in a manner which will minimize the shifting of insureds among carriers, except that nothing herein shall be interpreted to affect the provisions of P. L. 1968, c. 158 (C. 17:29C-6 et seq.).

b. The plan of operation adopted by the board shall be submitted to the commissioner for his review and approval. If the commissioner approves the proposed plan, he shall certify such approval to the directors and said plan shall take effect on the date certified by the commissioner. If the commissioner disapproves all or any part of the proposed plan of operation, he shall return same to the directors with a statement, in writing, of the reasons for his disapproval and any recommendations he may wish to make. The directors may accept the commissioner's recommendations or may propose a new plan, which recommendations or plan shall be submitted to the commissioner within 30 days after the return of a disapproved plan to the directors. If the directors do not submit a proposed plan of operation or if the directors do not submit a

new plan which is acceptable to the commissioner, or accept the recommendations of the commissioner within 30 days after the disapproval of a proposed plan, the commissioner shall promulgate a plan of operation and certify same to the directors. Any such plan promulgated by the commissioner shall take effect on the date certified by the commissioner.

c. The directors of the association may amend the plan of operation at any time, subject to approval by the commissioner.

d. The commissioner shall review the plan of operation at least once a year, and may propose amendments to the board. If the board does not adopt amendments acceptable to the commissioner within 30 days, the commissioner may certify amendments and their effective date to the board.

e. Any order of the commissioner with respect to the plan of operation, or any amendment thereto, shall be subject to review by the Appellate Division of the Superior Court.

19. (New section) Pursuant to the plan of operation, the association shall have the power and duty to:

a. Enter into contracts as are necessary or proper to carry out the provisions and purposes of this act;

b. Sue or be sued in the name of the association, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members. A judgment against the association shall not create any direct liability against the servicing carrier, board of directors or the individual members, or the individual participating members of the association;

c. Indemnify its directors and employees for any and all claims,

suits, costs of investigations, costs of defense, settlements or judgments against them on account of an act or omission in the scope of a director's duties or employee's employment. The association shall refuse to indemnify if it determines that the act or failure to act was because of actual fraud, willful misconduct or actual malice;

d. Take such action as is necessary to prevent and avoid the payment of improper claims against the association or the coverage provided by or through the association;

e. Arrange for the issuance of automobile insurance to any qualified applicant through servicing carriers. Each servicing carrier shall issue policies in the name of the servicing carrier, on behalf of the association, to the extent the plan of operation provides. Servicing carriers, as agents of the association, shall have no individual liability for claims or policies written by the association;

f. Appoint from among its members appropriate legal, actuarial, claims, investment and other committees as necessary to provide technical assistance in the operation of the association, policy and other contract design, and any other function within the authority of the association;

g. Establish standards for, and review operating practices of, servicing carriers and producers to determine whether such practices are adequate to properly service association business, and to take appropriate action to eliminate inadequate operating practices and develop adequate operating practices, and to appoint an audit committee to review operating practices. The audit committee shall be composed of servicing carriers, producers, and mem-

ber companies who are not servicing carriers;

h. Develop criteria and establish a monitoring system to ensure that: (1) servicing carriers do not obtain an unfair advantage, because of their servicing carrier relationship with producers over other member companies which are not servicing carriers; and (2) member companies do not obtain an unfair advantage over producers of record without a contractual relationship with a voluntary market company, as a result of an offer of voluntary market coverage to an insured of the association.

i. Order the reporting of such statistics by the members of the association as it deems necessary;

j. Reimburse servicing carriers from association funds;

k. Adopt bylaws for the regulation of its internal affairs;

l. Employ a general manager, who shall serve at its pleasure and be responsible for the conduct of the administrative affairs of the association. The board may employ other necessary personnel and may delegate to the general manager and other personnel such authority as it deems necessary to assure proper administration and operation of the association consistent with the plan of operation. The board shall arrange and contract if necessary for suitable quarters within the State of New Jersey for operations of the association for such equipment, goods and services and insure such expenses as it deems necessary to assure efficient administration of the association consistent with the plan of operation. If required by the plan of operation, the board may establish service centers in underserviced areas, which service centers shall provide for the dissemination of full information on the coverages available

under this act and for referrals to appropriate outlets for the acquisition of such coverage;

m. Hear and determine complaints of any member or producer concerning the operation of the association in accordance with procedures prescribed in section 28 of this act;

n. Annually report to the commissioner on the operation of the association;

o. Record and investigate complaints involving the conduct of producers and to take appropriate corrective action or to recommend to the commissioner appropriate disciplinary action, including suspension or revocation of authority to write association business;

p. Review servicing practices of servicing carriers to determine whether such practices are adequate to properly service the risks written by the association; and upon finding that the practices of any servicing carrier are inadequate, establish a program for that member which will assist the servicing carrier in the performance of its duties and charge that servicing carrier a reasonable fee for establishing and operating such a program;

q. Audit the operations of members for the purpose of determining compliance with this act;

r. Develop methods and standards for the establishment of adequate, actuarially sound reserves for unpaid losses, including provision for incurred but not reported losses; and

s. Take such other action as is necessary to effectuate the purposes of this act.

20. (New section) a. The association shall derive income from

the following sources for the payment of expenses, losses, and the provision of adequate, actuarially sound reserves for unpaid losses, including incurred but not reported losses, in connection with association business: (1) net premiums earned; (2) income generated from any association accident surcharge system permitted or required by law; (3) that percentage of surcharges collected by the Division of Motor Vehicles and deposited with the association pursuant to subsection b. of section 6 of the "New Jersey Automobile Insurance Reform Act of 1982" (P. L. , c. C. .....), and that collected and retained by the association pursuant to subsection c. of said section 6; (4) income collected by members of the association and by the association pursuant to subsection b. of this section; and (5) income from investment of moneys collected pursuant to subsections (1), (2), and (3) of this subsection. Premiums received as a residual market equalization charge on behalf of the association, net of commissions paid, and all premium taxes, shall on a monthly basis be certified to by the carrier and shall be transferred to the association in accordance with the plan of operation. All premiums received by servicing carriers on behalf of the association, net of commissions paid, all premium taxes, and servicing carrier compensation, shall on a monthly basis be certified to by the carrier and shall be transferred to the association in accordance with the plan of operation.

All claims paid on association business shall be disbursed by the servicing carriers or the association through drafts drawn on association funds in accordance with the plan of operation. Servicing carriers, as agents of the association, shall have no individual

liability on claims or policies written by the association.

b. At least annually, the board shall file its experience with the commissioner, which experience shall include the projected income, expenses, losses and reserve requirements of the association for the ensuing year, any adjustment in previously established reserves for unpaid losses necessary to make such reserves adequate and actuarially sound, and the initial filing shall include the experience of the automobile insurance plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1). The board shall include in its filing with the commissioner, for his approval, a computation of the residual market equalization charge per insured vehicle to be collected by each member from its voluntary insureds, exclusive of principal operators 65 years of age or older, and by each servicing carrier from association insureds, exclusive of principal operators 65 years of age or older, to offset the anticipated losses of the association.

At the end of the first 12 months of the operation of the association and at least annually thereafter, the board shall also include in its filing with the commissioner a review of the previous year's experience, setting forth the income losses, and reserve requirements, including any adjustment in previously established reserves for unpaid losses necessary to make such reserves adequate and actuarially sound, and expenses of the association during the previous year. If a profit is found by the commissioner to have been realized, such amount shall reduce the residual market equalization charge levied on policyholders pursuant to subsection d. of this section. If a loss is found by the commissioner to have occurred,

such amount shall increase the charge levied on policyholders pursuant to subsection d. of this section. The filing shall be accompanied by such statistics and other information as the commissioner may deem necessary. The commissioner shall, within 60 days of such filing, approve or disapprove the filing. Failure to act within 60 days shall be deemed approval of the filing except that the running of the 60-day period shall be tolled by a request for additional information by the commissioner or until the association notifies the commissioner that it will not provide such additional information, together with the reason for not supplying the information. Failure to comply with a reasonable request for information may be a ground for disapproving all or part of the filing. If the commissioner disapproves all or part of the filing, he shall state the reasons for such disapproval, and indicate such portion of the filing he approves. Such disapproval shall be subject to review by the Appellate Division of the Superior Court.

c. The residual market equalization charge last approved by the commissioner shall continue to apply while the application for the revised charge is being processed by the commissioner pursuant to this section.

d. The residual market equalization charge per insured vehicle shall be collected following the effective date of such approval by the insurer from its policyholders, exclusive of principal operators 65 years of age or older, on a uniform net direct car year of liability exposure basis and a net direct car year of physical damage exposure basis. Any insurer or rating organization making a residual market equalization charge pursuant to this subsection

shall, 15 days prior to the date of the implementation of the proposed rate adjustment, make an informational filing with the commissioner documenting compliance with the established method of distributing such residual market equalization charge.

e. Any insurer licensed to transact automobile insurance after the effective date of this act, shall become a member of the association upon receiving such license and the determination of any such insurer's participation in the association shall be made as of the date of such membership in the same manner as for all other members of the association.

21. (New section) a. Any qualified applicant shall be entitled to apply to the association for insurance coverage available pursuant to section 27 of this act. Subject to procedures established in the plan of operation, producers shall have authority to issue binders to qualified applicants.

b. If the servicing carrier determines that the applicant is a qualified applicant, the carrier, as an agent of the association, upon receipt of the appropriate premium, or such portion thereof as is prescribed in the plan of operation, shall issue or cause to be issued a policy of automobile insurance which shall include coverages and limits requested by the applicant and available under section 27 of this act.

c. No licensed insurance producer regularly engaged in selling or placing automobile insurance in this State shall refuse to furnish to any applicant quotations of premiums for association automobile insurance or shall fail to submit the application of a qualified applicant to the association when requested to do so by a qualified

applicant.

d. No company shall terminate any agent or restrict the authority of any agent, directly or indirectly, or in any manner whatsoever, solely by reason of the volume of such agent's business written on behalf of the association or the experience produced by such business.

e. The association shall accept applications for coverage 90 days after the plan of operation has been approved.

22. (New section) Producers who are exclusive representatives of a company which is a servicing carrier shall be assigned to that carrier for the servicing of association policies. Producers who are not exclusive representatives of a servicing carrier may, at the election of the producer and with the consent of the servicing carrier, contract with the association to do business through any servicing carrier. Producers who are not exclusive representatives of a company which is a servicing carrier or who have not otherwise established a contractual relationship with a servicing carrier pursuant to this section, shall be assigned to all servicing carriers on an equitable basis by the association, pursuant to the plan of operation. The assignments shall be in proportion to the percentage of association business which each servicing carrier has contracted with the association to accept and shall be balanced among territories. The assignments shall be reviewed at least annually and upon the request of a servicing carrier or producer. Pursuant to the plan of operation, the assignments shall be reallocated if it is found that the allocations are demonstrably in equitable. Reallocations shall be made in a manner to minimize the shifting of producers.

Every producer shall be assigned two alternate servicing carriers, pursuant to the plan of operation. In the event that any servicing carrier normally assigned to any producer ceases, as may be provided in the plan of operation, to accept applications temporarily, such applications shall be redistributed by the association to each producer's alternate servicing carrier.

23. (New section) The producer shall receive commissions on association business in accordance with a schedule of commissions promulgated in the plan of operation. The schedule of commissions so promulgated shall be designed to serve and reconcile the following objectives: a. to encourage equal treatment of policyholders in the association and the voluntary market; b. to minimize disincentives to the placement of applicants in the voluntary market; c. to stimulate marketing efforts in underserviced areas; d. to provide reasonable compensation for services performed by producers; e. to provide protection to the producer of record without a voluntary market company, upon the offer of voluntary market coverage to an association insured; f. to provide for an equitable rate of commission for producers during a transition period, as the term of such period is determined by the board. No rate of commission shall be less than that provided pursuant to the automobile insurance plan established pursuant to P. L. 1970, c. 215 (C.17:29D-1), as payable as of December 31, 1981.

24. (New section) a. Pursuant to the procedures and standards established in the plan of operation, the board may permit any qualified member to act as a servicing carrier upon application by the member. Insurers under common management or ownership

may elect to submit an application to act as a servicing carrier in the name of any company in the group which is licensed and authorized to transact automobile insurance in this State. The commissioner may disapprove the action by the board, if he finds that the action is not in the best interests of the association, the insurer, or the purposes of this act, within 20 days of final approval by the board. The disapproval shall be made in writing and shall set forth the reasons for disapproval.

b. After notice and hearing, the commissioner may require one or more members of the association or member of a group as provided in subsection a. of this section to act as servicing carriers, if he determines that the action is necessary to effectuate the purposes of this act, except that no company having less than 1% of the private passenger automobile insurance market in this State based on its net written car years of exposure shall be subject to the provisions of this subsection.

c. Pursuant to procedures established by the commissioner, any member of the association which is acting as a servicing carrier may apply to the commissioner for permission to discontinue acting as a servicing carrier. After notice and a hearing, the commissioner may permit such insurer to discontinue acting as a servicing carrier, on terms to be imposed by the commissioner, if the commissioner finds that such action is in the best interests of the insurer, the association and the purposes of this act.

d. Any order of the commissioner pursuant to this section shall be subject to review by the Appellate Division of the Superior Court.

25. (New section) The rates used by the association shall be the same as those used by the rating bureau which files rates for the greatest number of insurers transacting "*private passenger*" automobile insurance "*in the voluntary market*" in this State.

26. (New section) The association shall, in the plan of operation, establish procedures to encourage the voluntary writing of qualified applicants without the utilization of the association. These procedures shall include provisions for appropriate incentives to encourage companies to voluntarily write those applicants who are qualified for insurance by the automobile insurance plan established pursuant to P. L. 1970, c. 215 (C. 17:29D-1).

Any voluntary coverage offered in accordance with established procedures of this section shall be offered through the producer of record, if such producer is the voluntary market producer of the company offering to provide this coverage; if the producer of record does not have a contractual relationship with any voluntary market company, he shall be entitled to the payment of a producer's commission for three years following the providing of voluntary coverage. Renewals of this policy shall be written through the voluntary market producer of record, unless written notice to the contrary is given by the insured not less than 30 days prior to such renewal.

27. (New section) A qualified applicant who is eligible for coverage through the association shall be offered and entitled to coverage up to at least the following limits: a. bodily injury liability: $250,000.00 each person, $500,000.00 each accident; b. property damage liability: $100,000.00; c. bodily injury and prop-

erty damage: $500,000.00 single limit each accident; d. comprehensive and collision coverage; e. uninsured motorist and underinsured motorist coverage: $250,000.00 each person and $500,000.00 each accident for bodily injury; $100,000.00 each accident for property damage or $500,000.00 single limit, subject to an exclusion of the first $100.00 of the damage to property for each accident, except that the limits for uninsured and underinsured motorist coverages on association coverage shall not exceed the insured's policy limits for bodily injury and property damage, respectively; f. personal injury protection coverage as required by law; g. additional personal injury protection coverage required to be offered by law; and h. any other automobile insurance required to be offered by law and subject to the limits stated in the law. Motorcycles shall not be written for the coverages required or required to be offered pursuant to P. L. 1972, c. 70 (C. 39:6A-1 et seq.).

28. (New section) a. A member insurer or producer aggrieved by a ruling of the association or by its alleged violation of or failure to comply with the plan of operation or the provisions of this act shall be entitled to a hearing upon a request made within 30 days after the date of the alleged violation or improper act or ruling, provided the commissioner may extend the time for requesting a hearing in extraordinary situations. The hearing shall be held within 15 days after the receipt of the request by a panel of the board consisting of not less than three member company representatives, one producer representative and one public member, at a time and place designated by the board. The ruling of a majority of the panel shall be deemed to be the formal ruling of the

board unless the full board, on its own motion, shall modify or rescind the action of the panel.

b. Within 30 days after the conclusion of any hearing held pursuant to this section, the board shall issue a written ruling setting forth the determination of the issues presented and the facts and reasons on which such determination is based. This ruling may be appealed to the commissioner by the filing of a written notice of appeal with the board and commissioner within 30 days after issuance of the ruling.

c. The commissioner shall issue a written order approving, disapproving or modifying the action or decision of the board or directing it to reconsider its ruling.

d. Any order of the commissioner pursuant to this section shall be subject to review by the Appellate Division of the Superior Court.

29. (New section) a. The commissioner may suspend or revoke, after notice and a hearing, the certificate of authority of any member insurer or the license of any agent or broker who willfully fails to comply with the provisions of this act or the regulations or plan of operation promulgated thereunder. In addition to or in lieu of suspension or revocation, any member company violating the provisions of this act or the regulations or plan of operation promulgated thereunder may be fined by the commissioner up to $5,000.00 for each such violation; and any agent or broker violating the provisions of this act or the regulations or plan of operation promulgated thereunder may be fined by the commissioner up to $1,500.00 for each violation. These penalties shall be enforced

and collected by the commissioner in the name of the State pursuant to "the penalty enforcement law" (N. J. S. 2A:58–1 et seq.).

b. If, after notice and opportunity to be heard, the board finds that a producer has violated the provisions of this act or the regulations, plan of operation or standards promulgated pursuant to this act, the board shall notify the commissioner and may request the commissioner to temporarily suspend the producer's authority to write new association business. The commissioner may issue an order suspending the producer's authority to write new association business, pending a hearing which shall be held within 20 days of the issuance of the order. If, after a hearing, the commissioner finds that the producer has violated the provisions of this act or the regulations, plan of operation or standards promulgated pursuant to this act, he shall take appropriate disciplinary action, including suspension or revocation of the producer's license or producer's authority to write business for the association or both.

30. (New section) One year after the operative date of this act and annually thereafter the commissioner shall make a comprehensive report to the Governor and the Legislature assessing the effectiveness of the act in accomplishing its stated purposes.

31. (New section) For the purposes of monitoring and evaluating the effectiveness of the implementation of this act, the commissioner shall forward a copy of the plan of operation or any amended plan of operation to the Senate and General Assembly on the first day in which both Houses shall be meeting in the course of a regular or special session after a plan or amended plan has been certified to the directors.

32. (New section) In addition to the general powers conferred upon the commissioner by law and this act, the commissioner shall have the authority to promulgate such regulations as he deems necessary for the effective implementation of this act.

33. (New section) Twelve months after the operative date of this act the board shall submit to the commissioner recommendations with respect to the provision of insurance coverage to commercial vehicles through the association or a similar entity.

34. (New section) Taxes required to be paid pursuant to P. L. 1945, c. 132 (C. 54:18A-1 et seq.) on premiums earned by the association shall be paid by the association to the Director of the Division of Taxation.

35. (New section) For purposes of evaluating the implementation and effects of the "New Jersey Automobile Insurance Reform Act of 1982" (P. L. , c. ; C.), and the "New Jersey Automobile Full Insurance Availability Act" (P. L. , c. ; C.), there is created a study commission comprised of 14 members, eight of whom shall be appointed by the Governor, three of whom shall be appointed by the Speaker of the General Assembly and three by the President of the Senate. Of the three members appointed by the Speaker, two shall be members of the General Assembly, one from each of the two principal political parties, and one shall be a public member. Of the three members appointed by the President, two shall be members of the Senate, one from each of the two principal political parties, and one shall be a public member. The Commissioner of Insurance and the Director of the Division of Motor Vehicles in the Department of

Law and Public Safety shall be ex officio members of the commission. The Governor shall appoint the chairman of the commission. Any vacancies on the commission shall be filled in the same manner as the original appointment.

The commission shall be established not later than 12 months following the operative date of this act. The commission shall organize itself as soon as practicable after the appointment of its members; the commission shall organize itself and conduct its affairs in such manner as may be deemed appropriate.

The commission shall be entitled to call to its assistance and avail itself of the services of any employee of State Government, or any political subdivision thereof, it may require and as may be available to it, and to employ such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, and as may be within the limits of funds appropriated or otherwise made available for the commission's purposes.

The commission shall have the power to compel the attendance and testimony of any witnesses and the production of any books or papers that it may deem necessary or appropriate to the conduct of its study.

The commission study shall evaluate market conditions resulting from the implementation of the aforesaid two acts with respect, but not limited to: market availability, affordability and equity of automobile insurance coverage; the operation and effectiveness of the modified two tier rating system including the effectiveness and adequacy of merit rating plans and surcharge systems; the

fairness of, and statistical basis for territory and classification systems in use; the effectiveness of the prior approval system; the effectiveness and fairness of the New Jersey Automobile Full Insurance Underwriting Association, including the adequacy and fairness of its funding system; and the creation of genuinely competitive market conditions.

The commission shall report its findings and recommendations on how to further improve the equity, availability and affordability of automobile insurance coverage to the Governor and Legislature not later than three years following the operative date of this act.

36. (New section) Severability. The provisions of this act shall be severable, and if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect the validity of the remaining provisions of this act, except that the provisions of section 25 shall not be severable from the provisions of sections 13 to 31, and if any of the provisions of section 25 shall be held to be unconstitutional, the commissioner shall establish a plan for the providing of automobile insurance pursuant to P. L. 1970, c. 215 (C. 17:29D-1).

37. Sections 1 through 36 shall take effect on January 1, 1983, but shall, except as otherwise specifically provided, remain inoperative until *[July 1, 1983]* *January 1, 1984* in order to permit the taking of such measures as may be necessary for the implementation thereof.